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MOTION FILED MAY 25 1965

JOHN F. DAVIS, CLERK

IN THE

**Supreme Court of the United States**

OCTOBER TERM, 1961

No. 13 Original

STATE OF TEXAS,

*Plaintiff,*

*vs.*

STATE OF NEW JERSEY, *et al.*,

*Defendants,*

*and*

STATE OF FLORIDA,

*Intervenor.*

**MOTION FOR MODIFICATION OF FINAL DECREE**

ARTHUR J. SILLS,  
Attorney General of New Jersey,  
*Attorney for Defendants,*  
State House Annex,  
Trenton, New Jersey. 08625

ALAN B. HANDLER,  
First Assistant Attorney General,

CHARLES J. KEHOE,  
Deputy Attorney General,  
*Counsel for Defendant,*  
*State of New Jersey.*

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STATE OF NEW JERSEY, *et al.*,

*Defendants;*

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STATE OF FLORIDA,

*Intervenor.*

---

**MOTION FOR MODIFICATION OF FINAL DECREE**

Defendant, State of New Jersey, respectfully moves the Court to modify the decree entered in this matter on April 26, 1965, in the following respects:

**I.**

By deleting from paragraph 2 of the said decree the words "subject to the right of any other State to recover such property from New Jersey upon proof that the last known address of the creditor was within that other State's borders."

## II.

By deleting from paragraph 3 of the said decree the words "subject to the right of the State of the last known address to recover the property from New Jersey if and when the law of the State of the last known address makes provision for escheat or custodial taking of such property."

(Form of proposed modified decree annexed as Exhibit A.)

In the alternative, New Jersey respectfully moves the Court to modify the said decree in the following respects:

## I.

By adding to paragraph 1 a provision that the escheated property may be recovered by any other State for a period of two years upon proof that the last known address of the creditor was within that other State's borders.

## II.

By including in paragraphs 2 and 3 a period of limitation that the escheated property can only be recovered from the State of incorporation which escheated same, within a period of two years thereafter.

(Form of proposed modified decree annexed as Exhibit B.)

ARTHUR J. SILLS,  
Attorney General of New Jersey,  
*Attorney for Defendant,*  
*The State of New Jersey.*

ALAN B. HANDLER,  
First Assistant Attorney General.

CHARLES J. KEHOE,  
Deputy Attorney General,  
*Of Counsel for Defendant.*

### **Preliminary Statement**

The defendant Sun Oil Company by letter dated March 11, 1965, submitted to the Clerk of this Court a form of decree which was satisfactory to Sun. A copy of said form of decree is annexed hereto and marked Exhibit C.

By letter dated March 17, 1965, New Jersey informed the Clerk of its objection to the following words in paragraph 3 of the proposed decree "subject to the right of the State of the last known address to recover it from New Jersey if and when its law makes provision for escheat or custodial taking of such property" and requested an opportunity to present fully our position to the Court if the other parties insisted on including the objectionable words in the decree.

By letter dated March 23, 1965, the Clerk informed New Jersey that the proposed decree together with the letters from all of the parties would be presented to the Court and we would be advised. Copies of this correspondence are annexed hereto as Exhibit D.

Without affording New Jersey any further opportunity to present fully its position on the form of the decree, the Court entered its decree on April 26, 1965. The decree is annexed hereto as Exhibit E.

### **Statement in Support of Motion**

This case came within the jurisdiction of the Court when a controversy arose between the States of Texas, New Jersey, Pennsylvania, and Florida. All said States claimed a superior power to escheat or take custody of unclaimed intangibles held by Sun Oil Company, a New Jersey corporation doing business within and subject to the jurisdiction of not only the States who are parties in this litigation but also all other States in the United States.

The controversy which existed between the party States was completely adjudicated by the Court when the decree provided that the State of last known address as shown on the books and records of the corporate holder, Sun Oil Company, had the superior power to escheat or take custody of the unclaimed intangibles held by Sun and if there was no record of a last known address, then the State of incorporation had the superior power to escheat or take custody. At this point the decree achieves "ease of administration and of equity," the paramount influencing factors in the result reached by the Court as indicated by the following statement in the opinion, 379 U. S. 674, 683:

"We realize that this case could have been resolved otherwise, for the issue here is not controlled by statutory or constitutional provisions or by past decisions, nor is it entirely one of logic. It is fundamentally a question of ease of administration and of equity. We believe that the rule we adopt is the fairest, is easy to apply, and in the long run will be the most generally acceptable to all the States."

By including in paragraph 2 of the decree the words "subject to the right of any other State to recover such property from New Jersey upon proof that the last known address of the creditor was within that other State's borders" and in paragraph 3 the words "subject to the right of the State of the last known address to recover the property from New Jersey if and when the law of the State of the last known address makes provision for escheat or custodial taking of such property," it is respectfully submitted that there is thereby created uncertainty, lack of finality, and administrative difficulties.

Although the State of incorporation by this present decree may prosecute its right of title and possession to the

unclaimed intangibles by a judgment of escheat, it will be unable to rely with certainty upon the judgment of escheat or to use the funds for appropriate State or public purposes. Rather it will have to hold such funds indefinitely because at any time in the future another State under this Court's decree might assert a claim for the escheat of such property. Then there will be no finality with respect to such an escheat action. *A fortiori*, the case where a State of last known address has no escheat law at the time a State of incorporation has diligently escheated property. In such case the former State may undo the escheat proceedings of the latter State by enacting at any future time a law to enable it to escheat. Unnecessary administrative difficulties are thus created by a rule that the State of incorporation after it duly and diligently escheats the property must nevertheless hold the escheated funds indefinitely subject to the claim of the State of last known address at any time thereafter such State sees fit to enact an escheat law. Such absence of finality can only serve to create confusion and chaos. It represents a major departure from the settled rule that there should be finality in judgments. This Court has stated that public policy dictates that there be an end to litigation. *Baldwin v. Iowa State Traveling Mens Asso.*, 283 U. S. 522.

These problems—inevitable under the present decree—may be obviated by the inclusion of a reasonable period of limitations within which a State may undertake to assert a claim for property which has previously been escheated by a State under appropriate proceedings therefor. If the Court should conclude, after review of the motion here presented, that the decree should not be modified as originally recommended, we suggest that there be included in the decree a limitation on the time within which claims may be presented by a State without an escheat law



or a State which seeks to recover on the basis of new evidence relative to the last known address of the creditor.

Another point of concern and confusion in the form of the decree is that the restrictive words permitting a later claim to be made by another State for the escheated property are not included in paragraph 1. Paragraph 1 now provides:

"1. Each item of property in question in this case as to which a last known address of the person entitled thereto is shown on the books and records of defendant Sun Oil Company is subject to escheat or custodial taking only by the State of that last known address, as shown on the books and records of defendant Sun Oil Company, to the extent of that State's power under its own laws to escheat or to take custodially."

In paragraph 2 appear these words, absent in paragraph 1: "subject to the right of any other State to recover such property from New Jersey upon proof that the last known address of the creditor was within that other State's borders"; and in paragraph 3, "subject to the right of the State of the last known address to recover the property from New Jersey if and when the law of the State of the last known address makes provision for escheat or custodial taking of such property." As it is not outside the realm of possibility that at some future time it may be shown that the creditor established an address in a State other than that shown on the records of the corporation, the State of that address would surely be entitled to claim against the State of last known address on the books of the corporation.

The decree should be limited to holding that the State of last known address on the books of the corporation



has the superior power to escheat and where there is no known address on the books of the corporate holder the State of incorporation has the superior right to escheat. Such judgment would be final upon the facts presented in this case or in any like case and the corporate holder need have no concern about double liability. It will be protected by the judgment under the Full Faith and Credit Clause of the Constitution. *Standard Oil Co. v. New Jersey*, 341 U. S. 428. New Jersey urges the Court to adopt the modified form of decree which is annexed hereto as Exhibit A.

This Court has held in this case that a right to recover property herein escheated by the State of incorporation exists in any State which at any future date proves the last known address of the creditor was within that State's borders or that such right to escheat exists inchoate in a State of last known address which does not have an escheat law. The right can be exercised at any future time that such State may enact an escheat law. The rule thus enumerated does not create certainty, finality or ease in the administration of escheat laws. It will, on the contrary, foster conflicts and continuing difficulties in the administration of State escheat laws. It has implications and impacts which were not projected or crystallized in the arguments before the Court and there has been no clear treatment or analysis of the effect of such novel rule as embodied by this decree. To this extent the holding by this Court constitutes an adjudication of a question not fully or clearly presented to the Court in this case and runs contrary to the Court's policy that it will not pass upon abstract issues. *New York v. Illinois*, 274 U. S. 488, 490. At the very least the decree should be modified to include a period of limitations. This, we believe, can be accomplished by a modified form of decree as is annexed hereto as Exhibit B.

**CONCLUSION**

For the foregoing reasons we respectfully submit that the decree should be modified as herein requested and as set forth in Exhibits A or B.

In the alternative, this Court should grant leave for a hearing on the form of the decree to be entered or should grant leave for the filing of briefs and for argument on the issue of a limitation of time within which a State which has escheated intangibles shall be subject to a claim by another State upon new evidence on the last known address of the creditor or that it is a State of last known address which has now enacted an escheat law.

Respectfully submitted,

ARTHUR J. SILLS,

Attorney General of New Jersey,  
*Attorney for Defendant,*  
*The State of New Jersey.*

ALAN B. HANDLER,

First Assistant Attorney General.

CHARLES J. KEHOE,

Deputy Attorney General,  
*Of Counsel for Defendant,*  
*State of New Jersey.*

### Proof of Service

I, CHARLES J. KEHOE, Deputy Attorney General of the State of New Jersey, one of the attorneys for defendant, State of New Jersey, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 24th day of May, 1965, I served copies of the Motion for Modification of Final Decree, or in the Alternative for Additional Argument on each of the other parties to this action by depositing copies in a United States post office or mail box, with first class postage or air mail postage prepaid, and addressed to:

- (1) Honorable Waggoner Carr,  
Attorney General of Texas,  
Box R, Capitol Station,  
Austin, Texas 78711.
- (2) Honorable Walter E. Alexxandroni,  
Attorney General of the Commonwealth of Pennsylvania,  
State Capitol,  
Harrisburg, Pennsylvania.
- (3) Honorable Earl Faircloth,  
Attorney General of Florida,  
Capitol Building,  
Tallahassee, Florida.
- (4) Mr. Henry A. Frye,  
Attorney for the Defendant,  
Sun Oil Company,  
Pepper, Hamilton & Scheetz,  
Fidelity-Philadelphia Trust Building,  
Philadelphia 9, Pennsylvania.

CHARLES J. KEHOE,  
Deputy Attorney General  
of New Jersey.

**Exhibit "A"**

[Words to be removed from the original Decree  
are bracketed]

**SUPREME COURT OF THE UNITED STATES**

---

No. 13, ORIGINAL

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---

STATE OF TEXAS,

Plaintiff,

v.

STATE OF NEW JERSEY, *et al.*

---

**COMPLAINT**

[April 26, 1965.]

**FINAL DECREE**

This cause having come on to be heard on the Report of the Special Master heretofore appointed by the Court, and the exceptions filed thereto, and having been argued by counsel for the several parties, and this Court having stated its conclusions in its opinion announced on February 1, 1965, 379 U. S. 674, and having considered the positions of the respective parties as to the terms of the decree,

IT IS ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

*Exhibit "A"*

1. Each item of property in question in this case as to which a last known address of the person entitled thereto is shown on the books and records of defendant Sun Oil Company is subject to escheat or custodial taking only by the State of that last known address, as shown on the books and records of defendant Sun Oil Company, to the extent of that State's power under its own laws to escheat or to take custodially.

2. Each item of property in question in this case as to which there is no address of the person entitled thereto shown on the books and records of defendant Sun Oil Company is subject to escheat or custodial taking only by New Jersey, the State in which Sun Oil Company was incorporated, to the extent of New Jersey's power under its own laws to escheat or to take custodially, [subject to the right of any other State to recover such property from New Jersey upon proof that the last known address of the creditor was within that other State's borders.]

3. Each item of property in question in this case as to which the last known address of the person entitled thereto as shown on the books and records of defendant Sun Oil Company is in a State, the laws of which do not provide for the escheat of such property, is subject to escheat or custodial taking only by New Jersey, the State in which Sun Oil Company was incorporated, to the extent of New Jersey's power under its own laws to escheat or to take custodially, [subject to the right of the State of the last known address to recover the property from New Jersey if and when the law of the State of the last known address makes provision for escheat or custodial taking of such property.]

4. Any relief prayed for by any party to this action which is not hereby granted is denied.

**Exhibit "B"**

[Words to be removed from the original Decree are bracketed; new material is italicized.]

**SUPREME COURT OF THE UNITED STATES**


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 No. 13, ORIGINAL
 

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 STATE OF TEXAS,

Plaintiff,

v.

 STATE OF NEW JERSEY, *et al.*


---

**COMPLAINT**

[April 26, 1965.]

**FINAL DECREE**

This cause having come on to be heard on the Report of the Special Master heretofore appointed by the Court, and the exceptions filed thereto, and having been argued by counsel for the several parties, and this Court having stated its conclusions in its opinion announced on February 1, 1965, 379 U. S. 674, and having considered the positions of the respective parties as to the terms of the decree,

IT IS ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1. Each item of property in question in this case as to which a last known address of the person entitled thereto is shown on the books and records of the defendant Sun Oil

## Exhibit "B"

Company is subject to escheat or custodial taking only by the State of that last known address, as shown on the books and records of defendant Sun Oil Company, to the extent of that State's power under its own laws to escheat or to take custodially, *subject to the right of any other State, for a period of two years, to recover such property upon proof that the last known address of the creditor was within that other State's borders.*

2. Each item of property in question in this case as to which there is no address of the person entitled thereto shown on the books and records of defendant Sun Oil Company is subject to escheat or custodial taking only by New Jersey, the State in which Sun Oil Company was incorporated, to the extent of New Jersey's power under its own laws to escheat or to take custodially, *subject to the right of any other State, for a period of two years, to recover such property from New Jersey upon proof that the last known address of the creditor was within that other State's borders.*

3. Each item of property in question in this case as to which the last known address of the person entitled thereto as shown on the books and records of defendant Sun Oil Company is in a State, the laws of which do not provide for the escheat of such property, is subject to escheat or custodial taking only by New Jersey, the State in which Sun Oil Company was incorporated, to the extent of New Jersey's power under its own laws to escheat or to take custodially, *subject to the right of the State of the last known address to recover the property from New Jersey [if and when the law of] for a period of two years if the State of the last known address, within said period, makes provision for escheat or custodial taking of such property.*

4. Any relief prayed for by any party to this action which is not hereby granted is denied.



## Exhibit "C"

Draft 3/11/65

IN THE  
 SUPREME COURT OF THE UNITED STATES  
 OCTOBER TERM, 1961

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 No. 13, ORIGINAL
 

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---

 STATE OF TEXAS,

Plaintiff,

vs.

STATE OF NEW JERSEY, *et al.*,

Defendants.

---

 FINAL DECREE

This cause having come on to be heard on the Report of the Special Master heretofore appointed by the Court, and the exceptions filed thereto, and having been argued by counsel for the several parties, and this Court having stated its conclusions in its opinion announced on February 1, 1965, and having considered the positions of the respective parties as to the terms of the decree, it is ordered, adjudged and decree as follows:

1. Each item of property in question in this case is subject to escheat or custodial taking only by the State of the

*Exhibit "C"*

last known address of the person entitled thereto, as shown on the books and records of defendant Sun Oil Company, to the extent provided by and subject to the limitations contained in the law of that State.

2. Each item of property in question in this case as to which there is no address of the person entitled thereto shown on the books and records of defendant Sun Oil Company is subject to escheat or custodial taking only by New Jersey, the State in which Sun Oil Company was incorporated, to the extent provided by and subject to limitations contained in the law of that State.

3. Each item or property in question in this case as to which the last known address of the person entitled thereto as shown on the books and records of defendant Sun Oil Company is in a State, the laws of which do not provide for the escheat of such property, is subject to escheat or custodial taking only by New Jersey, the State in which Sun Oil Company was incorporated, to the extent provided by and subject to limitations contained in the law of that State, subject to the right of the State of the last known address to recover it from New Jersey if and when its law makes provision for escheat or custodial taking of such property.

4. Any relief prayed for by any party to this action which is not hereby granted is denied.

**Exhibit "D"**

Tel. No. (Centrex)  
292-4670

March 17, 1965

Honorable John F. Davis, Clerk  
Supreme Court of the United States  
Supreme Court Building  
Washington, D. C. 20543

Texas v. New Jersey, et al. No. 13  
Original, October Term, 1961

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Dear Mr. Davis:

We have received a copy of letter, dated March 11, 1965, sent to you by the defendant, Sun Oil Company, together with a copy of the proposed form of decree.

New Jersey contends that the following words "subject to the right of the State of the last known address to recover it from New Jersey if and when its law makes provision for escheat or custodial taking of such property" should not be included in paragraph 3. We feel that the claim of any address State which does not presently have an escheat law was not before the Court. To include such language in the decree might be construed as a judgment in favor of such state even though it was not a party to the proceedings and might not enact an escheat law until the year 2000. No controversy exists between such State and New Jersey. Heretofore where no such controversy existed, this Court refused to take jurisdiction. *State of New York v. State of New Jersey*, 358 U. S. 924.

In addition, the result reached by the Court in this case is based upon case of administration and equity. To per-

**Exhibit "D"**

mit words in the decree which might indicate a right in an address State to claim escheated funds from a domicile State at any time after said funds have been escheated would not only cause a substantial administrative burden, it would also be inequitable. Undoubtedly, the escheated funds will have been used to pay the costs of government and the citizens should not then be expected to bear a tax burden to pay out escheated funds.

If the other parties insist on including in the decree the words herein objected to, we request an opportunity to fully present our position to the Court.

Very truly yours,

CHARLES J. KEHOE

Deputy Attorney General and  
Supervisor of Escheats

CJK:mmmb

cc: Augustus S. Ballard, Esq.  
W. O. Shultz, II, Esq.  
Fred M. Burns, Esq.  
Joseph H. Resnick, Esq.

*Exhibit "D"*

Office of the Clerk

SUPREME COURT OF THE UNITED STATES  
Washington, D. C., 20543

March 23, 1965

The Honorable Charles J. Kehoe  
Deputy Attorney General and  
Supervisor of Escheats  
State House Annex  
Trenton, New Jersey 08625

Re: Texas v. New Jersey, et al.  
No. 13 Original

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Dear Sir:

I have your letter of March 17 wherein you set out your objections to the proposed decree submitted by the Sun Oil Company in the above-entitled case.

The proposed decree, together with the letters from all of the parties, will be presented to the Court and you will be advised.

Very truly yours,

JOHN F. DAVIS  
Clerk

> By E. P. CULLINAN  
E. P. Cullinan  
Chief Deputy

EPC:jmh

**Exhibit "E"**

**SUPREME COURT OF THE UNITED STATES**

---

No. 13, ORIGINAL

---



---

STATE OF TEXAS,

Plaintiff,

v.

STATE OF NEW JERSEY, *et al.*

---

**COMPLAINT**

[April 26, 1965.]

**FINAL DECREE**

This cause having come on to be heard on the Report of the Special Master heretofore appointed by the Court, and the exceptions filed thereto, and having been argued by counsel for the several parties, and this Court having stated its conclusions in its opinion announced on February 1, 1965, 379 U. S. 674, and having considered the positions of the respective parties as to the terms of the decree,

IT IS ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1. Each item of property in question in this case as to which a last known address of the person entitled thereto is shown on the books and records of the defendant Sun Oil

*Exhibit "E"*

Company is subject to escheat or custodial taking only by the State of that last known address, as shown on the books and records of defendant Sun Oil Company, to the extent of that State's power under its own laws to escheat or to take custodially.

2. Each item of property in question in this case as to which there is no address of the person entitled thereto shown on the books and records of defendant Sun Oil Company is subject to escheat or custodial taking only by New Jersey, the State in which Sun Oil Company was incorporated, to the extent of New Jersey's power under its own laws to escheat or to take custodially, subject to the right of any other State to recover such property from New Jersey upon proof that the last known address of the creditor was within that other State's borders.

3. Each item of property in question in this case as to which the last known address of the person entitled thereto as shown on the books and records of defendant Sun Oil Company is in a State, the laws of which do not provide for the escheat of such property, is subject to escheat or custodial taking only by New Jersey, the State in which Sun Oil Company was incorporated, to the extent of New Jersey's power under its own laws to escheat or to take custodially, subject to the right of the State of the last known address to recover the property from New Jersey if and when the law of the State of the last known address makes provision for escheat or custodial taking of such property.

4. Any relief prayed for by any party to this action which is not hereby granted is denied.